THE LAW SCHOOL.

CLUB COURTS.

SUPERIOR COURT OF THE THAYER CLUB.

Conveyance by Warranty Deed.

A, who had no title to certain premises at the time, gave a warranty deed of them to the defendant, and the deed was recorded. A, later, bought the premises and conveyed them to the plaintiff. The defendant had taken possession of the premises. The plaintiff now brings ejectment.

The argument of the defendant is that the purchase by A enured to the defendant's benefit so that the subsequent conveyance by A to the plaintiff passed no title. At common law a conveyance of land, by one who at the time had no title to the land so conveyed, operated by estoppel, so that, if he subsequently got the title to the land, it would *eo instanti* by operation of law enure to the benefit of the grantee. The defendant contends that this principle of the common law has been extended in this country to conveyances by deeds of full warranty.

There are decisions in support of this position, but the Court which has most earnestly supported it, intimated in its last decision on the question that the principle of estoppel, as applied to warranty deeds, was not desirable, and, though firmly established in the State law, should be remedied by statute (see *Knight* v. *Thayer*[1]). Some States have distinctly repudiated the doctrine,[2] and certainly there is nothing to recommend it to the favor of this Court.

It is a mere theory, and, when coupled with our registry system, its practical results are bad; thus in the case at bar, though the deed by A to the defendant was recorded, it stood on the books of the company an isolated deed, which would not come to the notice of the plaintiff when he subsequently examined the records. A's record title to the premises was good when he conveyed to the plaintiff, and, if any reliance is to be placed on the registry system, plaintiff must be protected. This is no undue hardship to the defendant, since he might easily have found by examining the records that A had no title whatever to the premises he assumed to convey. The defendant has bought blindly, and must resort for his remedy to an action on the warranty.

LECTURE NOTES.

VOLUNTARY TRUSTS.— (*From Professor Ames' Lectures.*) — The basis of a trust is a contract, and most trusts are contracts binding the trustee in favor of a third person, the beneficiary, who can enforce the contract in equity. As an original question it would seem that voluntary trusts should not be enforceable, as they lack the element

[1] 125 Mass. 25.
[2] Calder *v.* Chapman, 52 Pa. St. 359; Way *v.* Arnold, 18 Ga. 181.

of consideration, which is essential to a contract, but they must now be recognized as an established anomaly.[1]

To charge a person with a voluntary trust, it must be shown that he has declared himself trustee of specific property in favor of the alleged *cestui que trust*. The property must be specific, for one of the essential elements of a trust is a *res*, to which the trust can attach. If the property is realty, the declaration of trust must be proved by a writing signed by the trustee; but, if the property is personalty, the declaration or admission may be proved by any evidence. As a declaration of trust is an expression of intention, a person cannot be charged as trustee if it appears that he did not intend to make himself trustee. It follows that an imperfect gift should not be construed as a declaration of trust.[2] Thus, a father, desiring to make his daughter a present, bought $2,000 worth of bonds, but, at her request, kept them himself, and remitted the interest to her. On his death it was held that she could not recover from the administrators, for the gift was not complete without a delivery of the bonds, and the Court could not make a trust out of an imperfect gift.[3]

The apparent meaning of a declaration or admission may be rebutted. Thus, if A, as "trustee for B," deposits money in a bank, and there is nothing to disprove the apparent intention, there is an irrevocable trust; and the trust is not the less effectually created if A retains the pass-book, and gives no notice to B.[4] But, if it appears that the deposit was not intended for B's benefit, the presumption of a trust is rebutted.[5]

On the same principle, what appears to have been a gift may be shown not to have been so intended. Thus, a deposit in a bank by A, in the name of B, is a complete gift to B, if so intended by A, and B may charge the bank for money had and received.[6] But, if a contrary intention is shown, B will hold as trustee for A.[7]

The same principle applies to policies of life insurance taken out by A in B's name,[8] or to stock entered by A in B's name on the books of the company.[9] Thus, in *Standing* v. *Bowring*,[10] it appeared that the plaintiff bought stock and entered it on the company's books in the name of the defendant, her godson, intending it as a gift; but she did not notify him. She afterwards married, and then requested him to transfer the stock to her. This he refused to do, and the Court held that the gift must be sustained, since the presumption of a gift had not been rebutted.

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[1] *Ex parte* Pye, Dubost, 18 Ves. 140 (Ames' Cas. on Trusts, 20); Price *v.* Price, 14 Beav. 598 (Ames' Cas. on Trusts, 64).

[2] Milroy *v.* Lord, 4 De G., F. & J. 264 (Ames' Cas. on Trusts, 70); Richards *v.* Delbridge, Law Rep. 18 Eq. 11 (Ames' Cas. on Trusts, 100).

[3] Flanders *v.* Blandey, 24 Rep. 311 (Ohio).

[4] Ray *v.* Simmons, 11 R.I. 266 (Ames' Cas. on Trusts, 113); Minor *v.* Rogers, 40 Conn. 512; Anderson *v.* Thompson, 38 Hun, 394; Witzel *v.* Chapin, 3 Bradf. 386; Smith *v.* Lee, 2 Th. & C. 591; Willis *v.* Smyth, 91 N.Y. 297; Mabie *v.* Bailey, 95 N.Y. 206; Gerrish *v.* New Bedford Inst. for Savings, 128 Mass. 159; Nutt *v.* Morse, 142 Mass. 1.

[5] Barker *v.* Frye, 75 Me. 29; Bartlett *v.* Remington, 59 N. H. 364; Eastman *v.* Woronoco Sav. Bank, 136 Mass. 208; Nutt *v.* Morse, 142 Mass. 1.

[6] Stapelton *v.* Stapelton, 14 Sim. 186; Mews *v.* Mews, 15 Beav. 529; Gardner *v.* Merritt, 32 Md. 78; Currant *v.* Jago, 1 Collyer, 261; Blasdel *v.* Locke, 52 N.H. 238; People *v.* State Bank of Fort Edward, 36 Hun, 607.

[7] Broderick *v.* Waltham Bank, 109 Mass. 149; Davis *v.* Lenawee County Sav. Bank, 53 Mich. 163; Robinson *v.* Ring, 72 Me. 140; Northrop *v.* Hale, 72 Me. 275; Burton *v.* Bridgeport Sav. Bank, 52 Conn. 398; Lodge *v.* Pughe, 8 Ch. Ap. 88.

[8] Lemon *v.* Phœnix Co., 38 Conn. 294; *Re* Richardson, 47 L. T. Rep. 514; Glanz *v.* Gloeckler, 104 Ill. 573; Scott *v.* Dickson, 108 Pa. 6.

[9] Adams *v.* Brackett, 5 Met. 280; Lucas *v.* Lucas, 1 Atk. 270; Jackson *v.* Twenty-third St. R.R. Co., 88 N.Y. 520; Standing *v.* Bowring, 31 Ch. D. 282.

[10] 31 Ch. D. 282.